

Resolution Opposing Upcoming Title IX Policy

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WHEREAS, the California State Student Association (CSSA) is the official voice of over 487,000 students in the California State University (CSU), and

WHEREAS, the Department of Education proposed changes to Title IX Federal regulations in November of 2018 which were said to be issued Fall of 2019 but has yet to be released, and

WHEREAS, some of the proposed changes will *require* schools to: not investigate incidents that have occurred off campus¹, dismiss harassment until it becomes severe and harmful enough to deny a student educational opportunities², hold investigations with the presumption that no harassment has occurred³, and require survivors to submit live cross-examinations by the respondents advisor of choice⁴, and

WHEREAS, some of the proposed changes will *allow* schools to: provide no clear timeline on the outcome of the investigation⁵, use preponderance of evidence standards⁶, and let religious schools use religious excuses for violating Title IX⁷, and

¹ *Rule summary (§§ 106.30, 106.45(b)(3))*: Schools “must dismiss” a formal complaint if the alleged conduct “did not occur within the [school’s] program or activity.”

² *Rule summary (§§ 106.30, 106.45(b)(3))*: Schools “must dismiss” a formal complaint if it alleges conduct that is not (i) an employee requesting sexual favors in return for good grades or other educational benefits; (ii) “unwelcome conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [school’s] education program or activity”; or (iii) “sexual assault.”

³ *Rule summary (§ 106.45(b)(1)(iv))*: Schools’ Title IX procedures must include “a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.”

⁴ *Rule summary (§ 106.45(b)(3)(vi)-(vii))*: in higher education, the school must conduct a “live hearing,” and parties and witnesses must be available for cross-examination by the other party’s “advisor of choice.” If requested, parties must be allowed to sit in “separate rooms” connected by “technology.” If a student does not submit to cross-examination,” the school “must not rely on any statement of that [student] in reaching a determination.”

⁵ *Rule summary (§ 106.45(b)(1)(v))*: Schools must have “reasonably prompt timeframes” but may create a “temporary delay” or “limited extension” of timeframes for “good cause,” which includes “concurrent law enforcement activity.”

⁶ *Rule summary (§ 106.45(b)(4)(i))*: A school may use a “preponderance of the evidence” standard to decide whether harassment occurred only if (i) it uses preponderance for all other misconduct that carries “the same maximum disciplinary sanction,” and (ii) it uses preponderance in complaints against employees. Otherwise, the school must use the more demanding “clear and convincing evidence” standard.

⁷ *Rule summary (§ 106.12(b))*: Religious schools “are not required to seek assurance from [ED] in order to assert” a religious exemption. In the event ED notifies a school that “it is under investigation for noncompliance with [Title IX],” the school “may at that time raise its exemption.”

WHEREAS, student body presidents at 76 colleges and universities in 32 states, The School Superintendents Association, National Association of Secondary School Principals, American Council on Education, American Association of Community Colleges, National Education Association, American Federation of Teachers, College and University Professional Association for Human Resources, NASPA-Student Affairs Administrators in Higher Education, Association of Title IX Administrators, Association for Student Conduct Administration, American Psychological Association, State legislators from 40 states and DC, 36 United States senators, and 19 state attorney generals have publicly opposed the rule, and

WHEREAS, a public comment on behalf of the California State University (CSU) Chancellor's office and all twenty-three CSU presidents states, "The safety and well-being of our highly diverse campus community is paramount, and we are deeply committed to ensuring a safe working, learning and living environment at every campus, in compliance with CSU policy and all applicable federal, state and local laws," and

WHEREAS according to the NCAA, "The U.S. Department of Education also enforces the Clery Act (1990). Title IX and the Clery Act are two separate federal regulations with overlapping concerns that are intended to be complementary," meaning the Clery Act can be used to support survivors when new Title IX regulations are not equitably serving students, and

RESOLVED, that CSSA calls upon the Chancellor's office to equip each university's Title IX department with information on Clery Act as a support against new Title IX regulations; and be it further

RESOLVED, that CSSA recognizes the new Title IX regulations will add increasingly oppressive barriers to already difficult Title IX reporting processes CSU wide; and be it further

RESOLVED, in order to grant time for civil rights advocates to fight against the Title IX changes, CSSA calls upon the chancellor's office and each CSU president to *not* change Title IX policies and procedures at the time the ruling is announced until it is effective ; and be it further

RESOLVED, that CSSA recognizes 94% of lawsuits challenging Trump's rulemakings have been successful and therefore urge the chancellor's office to file a lawsuit against the new Title IX policy; and be it further

RESOLVED, that CSSA calls upon the Chancellor's office to make sure student consultation is implemented in the steps leading up to the distribution of the new and any future system wide Title IX policy; and be it further

RESOLVED, this resolution shall be distributed to U.S. Secretary of Education, Betsy DeVos, Governor Gavin Newsom, U.S. Senator, Diane Feinstein, U.S. Senator, Kamala Harris, CSU Chancellor Timothy P. White, and Stephanie Wright, CSU Senior Director for Human Resources Compliance & Employment.